

## **REMARKS**

This communication responds to the Office Action mailed August 03, 2010.

Applicants have amended the claims to recite that the claimed transgenic cells comprises a polynucleotide that comprises the nucleotide sequence of SEQ ID NO:9. It is respectfully submitted that these amendments are fully supported by the originally filed specification, including the originally filed claims. Entry of the claim amendment and favorable reconsideration are respectfully requested.

### **Claim Objections**

The Office Action objected to claims 19, 22 and 38 for reciting non-elected sequences. These non-elected sequences have been deleted from claim 19 by the above claim amendments, and claims 22 and 38 have been cancelled.

The Office Action also objected to Claim 23 for the recitation of “any of”, which has also been deleted by the claim amendment.

All claim objections have thus been overcome.

### **Claim Rejections under 35 U.S.C. § 112, ¶ 2**

The Office Action rejected the claims under consideration for indefiniteness, asserting that the recitation of “hybridizes under stringent conditions” was not defined in the specification and not clear. The claims have been amended, and this phrase has been removed, overcoming the rejection.

### **Claim Rejections under 35 U.S.C. § 102(e)**

The Office Action further rejected all claims for lack of novelty, because Zank et al. (U.S. Pat. Pub. No. 20080155705A1) discloses a nucleotide molecule that would hybridize under stringent conditions with a nucleotide molecule having sequence of SEQ ID NO:9.

Applicant respectfully traverses. As an initial matter, Zank et al. is not a proper § 102(e) reference, because it is based on PCT/EP04/07957, an international application filed on July 16, 2004, which is after April 6, 2004, the priority date of the applicant's application. Further, PCT/EP04/07957 was not published in the English language, as § 102(e) explicitly requires. A copy of the cover page of PCT/EP04/07957 is attached herein as Exhibit I for the examiner's convenience.

Furthermore, the filing date of DE 10335992.3, the priority document of PCT/EP04/07957, cannot be relied upon to predate the instant application, because (1) DE10335992.3 is not an application filed in the United States; (2) nor was it an international application, (2) nor did it designate the United States, (3) nor was it published in the English Language. See e.g. *In re Giacomini*, 2010 WL 2674461 (Fed. Cir. 2010), at 8 (reciting the rule in *In re Hilmer*, 359 F.2d 859 (CCPA 1966), that the foreign priority date of a U.S. patent is not its effective date as a reference) (*emphasis added*). A copy of the cover page of DE10225992.3 was also attached herein, as Exhibit II, for the Examiner's convenience.

In any event, solely in order to expedite prosecution, without acquiescing to the rejections, applicant has amended the claims to recite that the transgenic cells comprises a polynucleotide molecule having a sequence as shown in SEQ ID NO:9. Because the full sequence of SEQ ID NO:9 was not taught by Zank et al., or any other prior art, it is respectfully submitted that the claims, as amended, are novel.

### **Claim Rejections under 35 U.S.C. § 103**

The Office Action lastly rejected the claims under consideration for obviousness over Zank et al., *supra*.

First of all, applicant notes that Zank et al. does not provide any teaching or suggestion that there is a likelihood of success that the exact sequence of SEQ ID NO:9 would or could be obtained.

In any event, as discussed above, Zank et al. is not prior art to the instantly claimed

invention and any rejections based thereon are improper and should be withdrawn.

Therefore, it is respectfully submitted that all claims, as amended, are in condition for allowance and applicant earnestly solicit an early indication from the examiner to that effect.

This response is timely by virtue of the concurrently filed petition for extension of time and the accompanying fees. Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No.50-4930, under Order No. 638001-07020 from which the undersigned is authorized to draw.

Dated: December 02, 2010

Respectfully submitted,

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